

# CHAPTER 7. ADMINISTRATION

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## **7.10 Public Hearings**

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### Sections:

- 7.10.010 - Purpose
- 7.10.020 - Notice of Hearing
- 7.10.030 - Scheduling Hearing
- 7.10.040 - Hearing Procedures
- 7.10.050 - Notice of Decisions

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### **7.10.010 Purpose**

This Section provides procedures for public hearings required by this Development Code. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted, in compliance with this Government Code Section 65090 et seq and the standards of this Section.

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### **7.10.020 Notice of Hearing**

- A. A public hearing notice shall be published in at least one newspaper of general circulation at least 10 calendar days prior to the hearing.
- B. The public hearing notice must include, at a minimum, the date, time, and place of the hearing, the hearing body, an explanation of the matter to be considered, and a general description of the location of the property that is the subject of the hearing.
- C. In addition, a notice of hearing it must be mailed or delivered at least 10 calendar days prior to the hearing:
  - 1. To the property owner or the owner's agent and the project applicant.
  - 2. To each local agency providing water, sewer, streets, roads, schools or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
  - 3. To all owners of property within 300 feet of the exterior boundary of the subject property. Alternatively, if the mailed notice would be to more than 1,000 property owners, the City may provide notice through a one-eighth page advertisement in at least one newspaper of general circulation.
- D. Public hearing notices shall be posted in compliance with Municipal Code Section 2700.

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### **7.10.030 Scheduling Hearing**

After the completion of any environmental document required by the California Environmental Quality Act (CEQA), a public hearing shall be scheduled, if required, in compliance with the minimum noticing periods established by State law and the Permit Streamlining Act (§65920 et. seq).

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### 7.10.040 Hearing Procedures

- A. **Time and place of hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. **Continued hearing.** Any hearing may be continued from time to time without further notice; provided, the chair of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- C. **Deferral of final decision.** The Review Authority may announce a tentative decision, and defer their action on a final decision until appropriate findings and/or conditions have been prepared.

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### 7.10.050 Notice of Decisions

Following a hearing, the City shall mail a notice of the decision and any findings and conditions of approval to the applicant at the address shown on the application.

## 7.20 Appeals

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### Sections:

- 7.20.010 - Purpose
- 7.20.020 - Appeal Jurisdiction
- 7.20.030 - Filing and Processing of Appeals
- 7.20.040 - Appeals to the Coastal Commission

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### 7.20.010 Purpose

This Section establishes procedures for the appeal of determinations by the Director or the Commission.

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### 7.20.020 Appeal Jurisdiction

- A. **Director decision.** A determination by the Director may be appealed to the Commission.
- B. **Commission decision.** A decision by the Commission may be appealed to the Council.

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### 7.20.030 Filing and Processing of Appeals

- A. **Eligibility.**
  - 1. An appeal may be filed by any aggrieved person, except in the case of a decision on a requiring a public hearing, an appeal may only be filed by any aggrieved person who, in person or through a representative, appeared at the public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.
- B. **Timing and form of appeal.** An appeal shall be submitted in writing and filed within 10 working days following the date of the decision and shall specifically state the pertinent facts and the basis for the appeal. The appeal shall include the required filing fee.
  - 1. Appeals addressed to the Commission shall be filed with the Department.
  - 2. Appeals addressed to the Council shall be filed with the City Clerk.
  - 3. Once an appeal is filed, any action on the associated development is suspended until the appeal is processed and the applicable Review Authority renders a final decision.

- C. **Scope of appeals.** An appeal of a decision on a development permit shall be limited to issues raised at the public hearing, issues submitted in writing before or at the hearing, or other information that was not known at the time of the decision.
- D. **Report and scheduling of hearing.**
1. When an appeal has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate Review Authority, identified in Section 7.20.020 (Appeal Jurisdiction).
  2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Section 7.10 (Public Hearings).
- E. **Decision.** Following the final decision on an application for a development permit or other approval required by this Development Code, the City shall provide notice of its final decision to the appellant, applicant (if not the appellant), and to any person who specifically requested notice of the City's final action.
- F. **Effective date of appeal decisions**
- A decision of the Review Authority is final and effective after 5:00 p.m. on the 10<sup>th</sup> working day following the date of the decision, when no appeal to the decision has been filed in compliance with this Section.
- G. **Notice of final action on appeals in the Coastal Zone.** Where an appeal has been filed and decided on an application that is appealable to the Coastal Commission (in compliance with Section 7.20.040 (Appeals to the Coastal Commission)), the City shall provide notice of the final action in compliance with Section 6.20.040 (Coastal Development Permit).

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## 7.20.040 Appeals to the Coastal Commission

- A. **Applicability**
- A final action taken by the City on a Coastal Development Permit application for appealable development as defined in Subsection C. may be appealed to the Coastal Commission in compliance with this Section.
- B. **Status of Appellant.**
- An appeal may be filed by an applicant, any aggrieved person (as defined in Section 9.10.030), or two members of the Coastal Commission in compliance with State law (Public Resources Code Section 30625).
- C. **Exhaustion of City appeals required.** An applicant or other aggrieved person may appeal a City decision on a development permit to the Coastal Commission only after all appeals to the Commission and Council have been exhausted in compliance with this Section. This limitation shall not apply to any circumstance identified in California Code of Regulations Section 13573, including:

1. An appellant was denied the right of appeal in compliance with this Section because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subchapter 2 of the California Code of Regulations; or
  2. An appeal of a City decision by two members of the Coastal Commission in compliance with Public Resources Code Section 30625. (Notice of a Coastal Commissioner's appeal shall be transmitted to the Council in compliance with California Code of Regulations Section 13573(b). The appeal shall be suspended where the City decision has been appealed to the Council. If the Council modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal of that decision.)
  3. Where an appellant is charged a fee by the City for the processing or filing of an appeal. (Am. Ord. 14-04)
- D. Appealable development - Public Resources Code Section 30603(a).** A decision by the City on a Coastal Development Permit for any of the following developments may be appealed to the Coastal Commission:
1. Between the sea and the first public road. Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance;
  2. Public trust lands, submerged lands, or tidelands. Developments located on public trust lands, submerged lands, tidelands, or within 100 feet of any estuary, stream, or wetland; and
  3. Public works/energy facility. Any development that constitutes a major public works project or energy facility.
- E. Grounds for appeal to Coastal Commission - Public Resources Code Section 30603.** The grounds for an appeal to the Coastal Commission of a City decision are as follows:
1. For approval of development as described in Subsection C. above, an allegation that the development does not conform to the standards of the City's certified Local Coastal Program or the public access policies of the Coastal Act; or
  2. For disapproval of development described in Subsection C above, an allegation that the development conforms to the standards of the City's certified Local Coastal Program and the public access policies of the Coastal Act.
- F. Time limit for filing an appeal to the Coastal Commission.** An appeal of a City decision on an appealable development shall be filed with the Coastal Commission within 10 working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this Section and the Coastal Act.
- G. Notice to City of appeal to Coastal Commission.** An appellant shall notify the City when appealing to the Coastal Commission by providing the City a copy of the information required by State law (California Code of Regulations Section 13111.)

## 7.30 Amendments

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### Sections:

- 7.30.010 - Purpose
- 7.30.020 - Initiation of Amendment
- 7.30.030 - Notice and Hearings
- 7.30.040 - Commission Action
- 7.30.050 - Council Action
- 7.30.060 - Findings and Decisions
- 7.30.070 - Effective Dates
- 7.30.080 - Amendment to the Local Coastal Program

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### 7.30.010 Purpose

This Section provides procedures for the amendment of the General Plan, this Development Code, and other adopted City goals, policies, and standards. See Section 7.30.080 for amendments to the LCP.

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### 7.30.020 Initiation of Amendment

- A. **Applicant.** Applications, including applicable fees, may be filed by an applicant, or an agent authorized in writing, for a General Plan, Development Code, Local Coastal Program, or Zoning Map amendment.
- B. **Council, Commission, or Director.** An amendment may be initiated by the Council or proposed by the Commission or the Director. The Council may also adopt an urgency measure as an interim ordinance in compliance with State law (Government Code Section 65858).

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### 7.30.030 Notice and Hearings

Notice of public hearing shall be given as required by Section 7.10.020 (Notice of Hearing) and as provided by State law.

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### 7.30.040 Commission Action

The Commission shall forward a recommendation to the Council to approve, modify, or deny the proposed amendment based on the findings in Section 7.30.060.

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### 7.30.050 Council Action

- A. **Approve or deny.** Upon receipt of the Commission's recommendation, the Council shall conduct a public hearing and either approve, modify, or deny the proposed amendment based on the findings in Section 7.30.060.
- B. **Refer to Commission**
  - 1. If the Council proposes to adopt a substantial modification(s) to the amendment not previously considered by the Commission, the proposed modification shall be first referred to the Commission for its recommendation, in compliance with Government Code Sections 65356 (General Plan amendments) and 65857 (Zoning Code or Zoning Map amendments).
  - 2. Failure of the Commission to report back to the Council within the time limits specified in Government Code Sections 65356 and 65857 the referral shall be deemed approval by the Commission of the proposed modification(s).

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### 7.30.060 Findings and Decisions

An amendment to the General Plan, this Development Code, or other adopted goals, policies, and standards may be approved only if all of the following findings are first made, as applicable to the type of amendment:

#### A. Required Findings.

- 1. Findings required for General Plan Amendments.
  - a. The amendment is internally consistent with all other provisions of the General Plan.
- 2. Findings required for all Development Code Amendments
  - a. The proposed amendment is consistent with the General Plan; and
  - b. The proposed amendment is internally consistent with other applicable provisions of this Development Code.
- 3. The proposed amendment will not be detrimental to the public health, safety, or welfare of the City; and
- 4. For General Plan Map and Zoning Map amendments, the affected site is physically suitable in terms of design, location, shape, size, operating characteristics, the provision of public and emergency vehicle access, and public services and utilities for the anticipated land uses.

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**7.30.070 Effective Dates**

- A. **Resolutions.** Council actions made by resolutions, such as a General Plan amendment, shall become effective 30 days after adopted by resolution and the period for referendum has elapsed.
- B. **Ordinance.** Council actions made by ordinances, such as a Development Code amendment, shall become effective 30 days after the adoption of an ordinance by the Council.

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**7.30.080 Amendment to the Local Coastal Program**

- A. **Council Action.** The certified Local Coastal Program (LCP) or any portion thereof (land use plan or relevant provisions of this Development Code) may be amended by the Council in compliance with the provisions of this Section.
- B. **Coastal Commission Certification.** Amendments to the LCP or any portion thereof approved by the Council shall be prepared for submittal, filed with the Coastal Commission, processed and certified by the Coastal Commission in compliance with the Coastal Act.

## 7.40 Nonconforming Uses, Structures, and Lots

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### Sections:

- 7.40.010 - Purpose
- 7.40.020 - Nonconforming Uses
- 7.40.030 - Nonconforming Structures
- 7.40.040 - Nonconforming Lots
- 7.40.050 - Loss of Nonconforming Status
- 7.40.060 - Nonconforming Due to Lack of Permit
- 7.40.070 - Exemptions

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### 7.40.010 Purpose

- A. The provisions of this Section shall apply to land uses, structures, and lots that were lawful before the adoption, or amendment of the Development Code, but which would be prohibited, regulated, or restricted differently in compliance with the current terms of the Development Code. These situations are deemed to have legal nonconforming status.
- B. It is the intent of the Development Code to allow nonconforming uses to exist in compliance with the limited conditions outlined in this Section, but to discourage the long-term continuance of nonconformities.
- C. This Section does not regulate nonconforming signs, which are subject to the standards of Section 3.60 (Signs), or nonconforming parking, which is subject to the standards of Section 3.50.020 (Parking Regulations).

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### 7.40.020 Nonconforming Uses

- A. **General.** A nonconforming use may be continued, including through a transfer of ownership; provided that the use shall not be enlarged or increased, nor be extended to occupy a greater area of land or structure than it occupied before becoming nonconforming, except as provided in Subsections B, C, and D below and in Section 7.40.070 (Exemptions). If the nonconforming use was approved with a Use Permit or other development permit, the use shall operate in compliance with all conditions (e.g., hours of operation).
- B. **Nonconforming use.** A nonconforming use may be replaced with a similar use subject to approval of a Use Permit (Section 6.20.090). The Review Authority shall find that the proposed use has similar or reduced impacts on surrounding properties and the same level of intensity or less intensive in terms of noise, traffic, parking demand, hours of operation, or other objectionable characteristics. If a nonconforming use is changed to a conforming use, no nonconforming use may be established thereafter.

**C. Expansion or Enlargement of Use**

1. Expansion or enlargement of a conforming use shall not require that other nonconforming uses on the subject lot be brought into conformance with the standards of that zone.
2. A nonconforming use may be expanded one time by up to 25 percent (measured in gross square footage occupied) through approval of a Use Permit (Section 6.20.090) provided the nonconforming use is not located west of Highway 1, that all off-site improvements, as identified by the City, are constructed by the applicant, in compliance with all City standards and the expansion is otherwise consistent with the Local Coastal Program. A nonconforming use shall not otherwise be expanded or enlarged unless required by law or by ordinance. (Am. Ord. 14-04)

- D. Alterations.** A conforming structure used for a nonconforming use may be reconstructed or structurally altered up to 50 percent of its replacement cost. However, if a finding can be made that the reconstruction or alteration would be an economic development benefit to the City, the Commission may approve a Use Permit for more than 50 percent of its replacement cost.

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**7.40.030 Nonconforming Structures**

- A. Uses Allowed.** A nonconforming structure may be used for any allowed or legal nonconforming use.

**B. Expansion or Enlargement of Structure**

1. Additions. Additions to nonconforming structures are allowed, as long as the addition complies with all development standards of the zone (see Chapter 2).
2. Single-family dwelling. A single-family dwelling, including its attached garage that is nonconforming with respect to setback standards, height limits, or other development standards may undergo interior modifications. Exterior modifications that go beyond the prior structure footprint may be allowed as follows:
  - a. The Director may approve an addition to a nonconforming single-family dwelling where the addition complies with all development standards for the zone (see Chapter 2) and nonconforming parking in compliance with Subsection 3.50.020.C.
  - b. An addition that encroaches into a required setback no further than an existing nonconforming portion of the structure may be allowed with a Use Permit (Section 6.20.090); provided that the addition is less than 25 percent of the total floor area of the existing structure, the property is not located west of Highway 1, and the Commission makes the following findings: (Am. Ord. 14-04)

- (1) The proposed addition is compatible with neighboring uses and would not adversely impact neighboring properties.
  - (2) The proposed addition meets all City Building and Fire Codes.
- C. **Maintenance and repair.** Any nonconforming structure or portion thereof may undergo ordinary maintenance and repair involving: cleaning; interior and exterior painting; re-roofing; the patching of cracks, holes, and other damage to interior and exterior walls; and, the replacement or repair of electrical or plumbing fixtures and lines.

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## 7.40.040 Nonconforming Lots

- A. **Legal building site.** A nonconforming lot that does not comply with the applicable area, width, or depth standards of the Development Code shall be considered a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director:
1. Approved subdivision. The lot was created by a recorded subdivision;
  2. Individual lot legally created by deed. The lot is under one ownership, was legally created by a recorded deed before the effective date of the amendment that made the lot nonconforming; or
- B. **Nonconforming residential lots**
1. 5,000 square foot lots. In any residential zone, lots legally created with minimum areas of 5,000 square feet, minimum widths of 50 feet, and minimum depths of 100 feet shall be considered "developable" lots requiring no additional permits other than required by this Development Code.
    - a. Lots less than 5,000 square feet. In any residential zone, lots legally created with a minimum width of 25 feet and a minimum depth of 50 feet may be developed with a single-family dwelling, except that no Variances (Section 6.20.100) shall be approved.
  2. Contiguous Lot Merger Under Common Ownership. The merger of a lot with an adjacent lot under common ownership, where one or both lots are substandard, shall be required in compliance with Government Code Section 66451.11.

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## 7.40.050 Loss of Nonconforming Status

- A. **Termination by Abandonment.**
1. Nonconforming use. If a nonconforming use is discontinued for a continuous period of 180 days or more in any zone except the Coastal Commercial zone, all rights to legal nonconforming status shall terminate. If a nonconforming use is discontinued for a continuous period of one year or more in the Coastal Commercial zone, all rights to legal nonconforming status shall terminate. The

Director shall make a determination of discontinuance based on evidence such as the removal of equipment, furniture, machinery, inventory, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or lack of business records to document continued operation.

2. Extensions of nonconforming uses or structures. An applicant can file an application for a Use Permit (Section 6.20.090) before the expiration of the abandonment period to extend the life of the nonconforming use. The Commission may approve a Use Permit to allow an extension, if the Commission finds that circumstances of a significant or unusual nature prevent or have prevented the timely reestablishment of the use or structure.
  3. Termination. Once the rights to a legal nonconforming status have terminated, any further use of the site or structure shall comply with the current standards of the applicable zone and all other applicable provisions of the Development Code.
- B. **Termination by destruction.** Except as provided in Subsection 7.40.070.B (Reconstruction or replacement), nonconforming status shall terminate if more than 50 percent of the appraised value of the structure or use is destroyed. In such case, the structure or use shall be rebuilt, restored, reestablished or reoccupied in conformance with the standards of the zone in which it is located, or be removed completely within 30 days of the occurrence of the damage or destruction.

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### 7.40.060 Nonconforming Due to Lack of Permit

A use lawfully existing without the approval of a Use Permit or other discretionary development permit that would now otherwise be required in the zone shall be deemed conforming only to the extent of its previous lawful use (e.g., maintaining the same site area boundaries, hours of operation, etc.).

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### 7.40.070 Exceptions

- A. **Interpretation.** Applications for exceptions from the strict interpretation of this Section may be made to the Commission. The Commission shall hold a public hearing to consider the application for the exception and shall either approve the application with any appropriate conditions or deny the application.
- B. **Reconstruction or replacement.** A nonconforming structure involuntarily damaged or destroyed as a result of an accident or by an event outside of human control, such as an earthquake, fire, or flood, may be reconstructed or replaced with a new structure with the same footprint, height, and/or number of dwelling units with Use Permit approval and in compliance with current Building and Fire Code standards.
- C. **Findings.** The Commission may make exceptions in compliance with this Section only after making the following findings:

1. That the structure was erected in compliance with the existing codes of the City which were in effect at the time that the structure was erected; and
2. That the granting of an exception will not substantially alter the intention of the existing zoning standards for the zone within which the structure is located.